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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 909

WALTER E. MEYER, Intervener,

Petitioner,

v.

BERRYMAN HENWOOD, as Trustee of St. Louis Southwestern Railway Company Lines, *et al.*,

Respondents.

PETITIONER'S REPLY TO MEMORANDA IN OPPOSITION TO PETITION FOR REHEARING

Dated June 18, 1947.

WALTER E. MEYER,
Petitioner, *Pro Se,*
And as Attorney for other Stockholders,
31 Nassau Street,
New York 5, N. Y.

R. WALSTON CHUBB,
Attorney for Petitioner,
408 Olive Street,
St. Louis 2, Missouri.

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Petitioner on June 13th received a "Memorandum on behalf of St. Louis Southwestern Railway Company, Debtor, in opposition to petition for rehearing," dated May *28*, 1947. On June 16th he received a "Reply by Southern Pacific Company, one of the respondents, to petitioner's petition for rehearing," dated May *23rd*.

Petitioner's petition for rehearing was filed with this Court on May *28th*, and on the same day copies were mailed to both the Debtor and Southern Pacific Company. It is obvious from the dates of said memoranda, as well as from statements contained therein, that said memoranda are not in reply to the petition for rehearing.

As To the Debtor's Memorandum

The Debtor contends (p. 8) that if petitioner desires to raise the question of whether the District Court has jurisdiction to dismiss proceedings under Section 77 he can only do so through challenge of the District Court's order of May 20, 1947, and that such issue is not before this Court upon the petition for certiorari.

The action of the District Court in dismissing the proceedings constitutes a new development, which at the same time raises a new question of law for consideration by this Court. A new development has been held sufficient ground for reconsideration by this Court of its denial of certiorari (*Paramount P. Corp.* v. *American Tri-Ergon Corp.*, 293 U. S. 528, 294 U. S. 464; *Sanitary Refrigerator Co.* v. *Winters*, 278 U. S. 587, 280 U. S. 30).

Debtor fails to meet petitioner's contention that the order of the District Court dismissing the reorganization proceedings, without first referring the matter back to the Commission in order to determine whether the Debtor is or is not in need of reorganization, raises a question of such importance as to call for a decision by this Court thereon, and therefore for a reconsideration of the order denying certiorari.

Debtor in its memorandum (p. 10) states that its greatly improved financial condition was sufficiently shown to this Court in the petitions for certiorari of the Debtor and of the Southern Pacific Company, and that there was no occasion to discuss its ability to pay out the sum of $18,331,525 on July 1, 1947, as revealed in the joint petition to dismiss.

In referring to the large balance of assets over liabilities, Debtor in its petition (p. 39) stated that these assets could either be used to reduce existing indebtedness or

"be put back into the system in the form of improvements in service, efficiency and equipment * * *." Southern Pacific in its petition (p. 30) states: "These accumulations of assets may be used in two ways: (1) to pay off the principal of existing indebtedness * * *; (2) to be plowed back into the business in the form of countless improvements in service, equipment and efficiency * * *." Thus this Court remained in ignorance of the important fact that there was no occasion to absorb a large amount of capital funds in additions and betterments, and that practically all of the liquid assets of the Debtor were available for the reduction of indebtedness.

It is petitioner's contention that if the fact that Debtor would be in a position to reduce its indebtedness by some $18,000,000 as of July 1, 1947, had been revealed to this Court by the Debtor, the Court would have been impressed with the necessity for a new plan of reorganization and would have granted certiorari.

As To Southern Pacific's Reply

Southern Pacific argues that the dismissal program will restore the stockholders to the same legal position as prior to the institution of reorganization proceedings.

Southern Pacific is both a large creditor and owner of seven-eighths of the outstanding stock of Debtor. It has shown in the past that it attaches greater importance to its interest as a creditor than to its interest as a stockholder. A restoration of the legal position of the minority stockholders will not afford protection against a repetition by Southern Pacific of its past wrongful and illegal acts in its relations with the Debtor.

Southern Pacific states that by the dismissal of the proceedings the economic position of the stockholders will be greatly improved.

The earnings of the Debtor at present are very large. If Southern Pacific carries out its fiduciary obligation to Debtor as controlling stockholder and its contractual obligations, such earnings will continue to be large.

There can be no certainty, however, that earnings will continue indefinitely at the present level.

The most effective means of protecting the interest of the minority stockholders would be the subordination of Southern Pacific's claim. Petitioner contends that the proof in the record calls for subordination.

Irrespective of this, petitioner submits that every reasonable step should be taken to add to the permanent earning power of the Debtor. A large increase in earning power can be effected through a lease of the property of the Debtor by Southern Pacific, as has been brought out in the petition for rehearing. The record shows that through a lease earnings long ago could have been so increased as to have dispensed with the necessity for reorganization proceedings.* Yet Southern Pacific refused and has continued to refuse to lease Debtor.

Beginning as far back as twenty-two years ago, and at least up to the outbreak of the war, as petitioner contends, Debtor's assets were wasted and its earnings impaired as a result of breaches by other railroads of their obligations to Debtor. During these many years almost all of the time of your petitioner has been taken in an endeavor to assert the rights and protect the interest of the Debtor.

An opportunity is afforded in connection with these proceedings to require Southern Pacific to lease the property of Debtor upon terms fair to all. A plan of reorganization coupled with a lease, as has been brought out, was proposed by Chairman Eastman of the Interstate Com-

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* Petition for rehearing, pp. 9, *et. seq.*

merce Commission. A lease would be in the interest of Southern Pacific and of the Debtor. Because it would make for increased efficiency and economy, it would be in the public interest.

Conclusion

For the reasons set forth in his petition for certiorari and his petition for rehearing, petitioner asks that the petition for rehearing be granted, and that, upon further consideration, the petition for certiorari be granted.

Dated, June 18, 1947.

Respectfully submitted,

WALTER E. MEYER,
Petitioner *Pro Se,*
And as Attorney for other Stockholders.

R. WALSTON CHUBB,
Attorney for Petitioner.